IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 51 OF 2005.

Mr. Kishanchand Chinaram,
presently lodged in
Judicial Custody,
at Central Jail,
Aguada, Bardez, Goa. .... Applicant.

Versus

State of Goa,
as represented by
Officer-in-Charge,
A.N.C. Police Station,
Panaji, Goa. .... Respondent.

Shri J. P. De Souza, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N. A. BRITTO, J.

DATE: 27th APRIL, 2005.

O R D E R:

The applicant herein is one of the two accused involved in ANC P.S. Cr.No.4/05, whose bail application has been rejected by Order dated 3.3.05 of the learned Special Judge, N.D.P.S. Court, Mapusa and who is now before this Court in a second attempt to obtain bail.

2. The learned Special Judge, at the time of rejecting his application for bail, has come to the conclusion that the quantity of ganja as well as

charas found with the accused was variable quantity punishable under Section 20(b)(ii)(B) of the N.D.P.S. Act, 1985. The learned Special Judge has further observed that although the quantity of ganja found with the accused is 6.235 kgs., was in excess of small quantity, but was less than commercial quantity, but since the charas found with him namely 808 gms. though being of variable quantity was nearer to the commercial quantity and therefore the offence would entail punishment of rigorous imprisonment which could extend to ten years and fine which also could extend upto Rs. 1 lakh and the offence being serious, the likelihood of the accused not making himself available, could not be ruled out as remote. The learned Special Judge also found that the accused is from Kulu Manali in Himachal Pradesh and who had no roots in Goa and therefore it would be difficult to ensure his presence at the trial.

3. Heard Shri J.P. De Souza on behalf of the accused and Shri Sardessai, learned P.P. on behalf of the respondent.

4. The accused was arrested on 12.1.05 and since then has been in custody. A charge-sheet has already been filed against both the accused involved in the said Cr. No. 4/05. It may be seen that the said Crime was registered under Section 20(b)(ii)(C) of the N.D.P.S. Act, 1985 and not only that the charge sheet has also been filed under the same Section. In

the reply filed, it has been stated that the drugs seized from the applicant and the other accused, are of commercial quantity and the offence is serious in nature.

5. An offence under S.20(b)(ii)(C) of the N.D.P.S. Act involves commercial quantity and is made punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

6. Section 37 of the N.D.P.S. Act 1985 makes the offences to be cognizable and non-bailable and clause (b) of sub-section (1) of S.37 inter alia provides that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence

while on bail.

7. Sub-section (2) of S.37 provides that the limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail. As rightly said, it is quite plan from the language of Section 37(1)(b) that the Court is required to adopt a negative attitude towards bail but turn positive, firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence under the Act and secondly that he is not likely to commit any offence while on bail.

8. From the stated facts it appears that both the accused who are brothers came all the way from Kulu Manali in Himachal Pradesh with a view to supply drugs to their customer/s near Alankar theatre, Mapusa. The raid was organized upon specific and reliable information so received by the Anti Narcotic Cell, Police Station, Panaji that a person, whose description later on fitted the present accused, would come to sell the drugs. Each of the accused are stated to have got nervous on seeing the police. Each of them were stated to have been carrying suitcases with false bottom and when the said suitcases were examined, as far as the present accused was concerned, he was found in possession of 6.235 kgs.

of ganja and 0.808 kgs. of charas, while the other accused was found with 7.03 kgs. of ganja and 1.444 kgs. of charas. It is difficult to accept at this stage, on the facts stated, that each of them did not know what the other was carrying. Their destination was common and so was their mission namely, to sell the drugs each of them was carrying. Possession is a polymorphous term which may have different meanings in different contexts. Generally it has two aspects, one is less important namely 'corpus' and the other more important namely 'animus'. Once it is proved that there was 'animus', it does not matter whether the possession is mediate or immediate, direct or indirect or exclusive or joint. From the facts stated, at this stage it could be safely presumed, until the accused are able to prove to the contrary at the trial, that the drugs found with them were being carried by them jointly for the purpose of sale and therefore both of them having been found with commercial quantities, would not be entitled to bail under Section 37 of the N.D.P.S. Act, 1985.

9. Hence the application is rejected.

N. A. BRITTO, J.

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